



Maricopa County
Air Quality Department

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Title: **Violation Penalty Policy Appendix A—
Asbestos Demolition and Renovation Penalty Guidelines**

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William D. Wiley, Director

Violation Penalty Policy

Appendix A

Asbestos Demolition and Renovation Penalty Guidelines

Violation Penalty Policy
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Asbestos Demolition and Renovation Penalty Guidelines

I. Purpose

This appendix to the Violation Penalty Policy provides guidelines to help department staff calculate penalties for use in settlement negotiations for violation of the department's asbestos regulations. The calculation approach described below should be used in conjunction with the Violation Penalty Policy when calculating penalties associated with asbestos violations for purposes of initial settlement discussions. Adjustments to penalties can always be made during the negotiation process to reflect case-by-case factors.

II. Calculation Guidelines

When a contractor conducts activities under a signed contract with a fully qualified contractor, the department will issue a single penalty to the contractor as the principal responsible party. Where there is no signed contract, a penalty will be issued to each responsible party. The department will apportion the penalty among the parties responsible for a violation.

This guideline outlines an approach using the gravity component penalty matrix set out below for violations of the department's asbestos regulations, Rule 370 Section 301.8, and the asbestos NESHAP, 40 CFR Part 61, subpart M. For each violation, this guideline describes how to select the appropriate matrix box in Table 1 to determine the gravity component of a penalty. Each box in the matrix corresponds to the varying degrees (minor, moderate or major) of a violation's *potential for harm* and *extent of deviation* from a requirement. This guideline also contains guidance specific to asbestos violations on when to assess multi-day or multiple violations and how to determine the economic benefit components of the penalty. The last section of this guideline includes an asbestos penalty worksheet to document penalty calculations including all adjustments, mitigating factors and other costs consistent with the Violation Penalty Policy. This guideline is comprised of six parts:

- A. Gravity Component-Potential for Harm—defines “major”, “moderate” or “minor”.
- B. Gravity Component-Extent of Deviation from Requirement—defines “major”, “moderate” or “minor”.
- C. Multi-day or Multiple Violations—outlines when to assess multi-day and multiple violations.
- D. Economic Benefit—discusses economic benefit considerations.
- E. Penalty Matrix—provides the matrix and discusses how to calculate the penalty.
- F. Asbestos Penalty Worksheet—provides a worksheet specific to asbestos to document penalty calculations.

III. Gravity Component-Potential for Harm—All Asbestos Violations

- A. Major Total amount of asbestos involved greater than 50 units.
- B. Moderate Total amount of asbestos involved greater than 10 units, but less than or equal to 50 units.

- C. Minor Total amount of asbestos involved less than or equal to 10 units, or quantity above the threshold amount cannot be determined.

A "unit" of asbestos is equivalent to 260 linear feet, 160 square feet or 35 cubic feet of asbestos-containing material. If more than one unit type is involved, convert each amount to equivalent units and then add the units to get a total.

IV. Gravity Component-Extent of Deviation from Requirement

The Extent of Deviation from Requirement section is split into three subsets corresponding to the most common types of asbestos violations. Extent of Deviation from Requirements is described separately for notification violations, waste shipment violations, and work practice violations. This is not an exhaustive list. Other violations can be considered.

A. Notification Violations

1. Major

No notification—failure to provide notification prior to ten days before start date of project and compliance with other aspects of the regulation is not demonstrated. 40 CFR 61.145(b)(3)(i); Rule 370, Section 301.8(a)(3).

2. Moderate

a. No notification—failure to provide notification prior to ten days before start date of project and compliance with other aspects of the regulations is demonstrated. 40 CFR 61.145(b)(3)(i); Rule 370, Section 301.8(a)(3).

b. Upon submittal of notification failure to wait ten working days before start of project. 40 CFR 61.145(b)(1); Rule 370, Section 301.8(a)(1)

3. Minor

a. Inaccurate notification—failure to accurately estimate the amount of asbestos-containing material affected by the renovation or demolition. 40 CFR 61.145(b)(4)(vi); Rule 370, Section 301.8(a)(1).

b. Inaccurate notification—failure to update notification as necessary when circumstances change, including, but not limited to, when the amount of asbestos-containing material affected by the renovation or demolition changes by 20 percent or more. 40 CFR 61.145(b)(2); Rule 370, Section 301.8(a)(1).

c. Other notification violations, such as failing to accurately complete the notification, or omitting required information in the notification; Rule 370, Section 301.8(a)(1).

Demonstration of compliance with the other aspects of the asbestos regulations includes, but is not limited to, documentation of the following:

- Regulated asbestos was not present in amounts above the applicable thresholds.
- The removal, handling and disposal requirements of the regulation were followed.
- The only regulation applicable to the renovation or demolition was the notification requirement.

B. Waste Shipment Violations

1. Major

- a. Improper disposal (violations of multiple provisions of 40 CFR 61.150); Rule 370, Section 301.8(b)(2)(d).
- b. Discharge of visible emissions to the outside air during collection, processing, packaging, or transportation any ACWM generated by the source. 40 CFR 61.150(a); Rule 370, Section 301.8(a)(1).
- c. After wetting, failure to contain all RACM in transparent, leak tight containers or leak tight wrapping while wet. 40 CFR 61.150(a)(1)(iii); Rule 370, Section 301.8(b)(2)(d).

2. Moderate

Failure to deposit all ACWM as soon as practical at a landfill not classified for receiving asbestos-containing material. 40 CFR 61.150(b); Rule 370, Section 301.8(a)(1).

3. Minor

- a. Failure to mark waste shipment vehicle during loading and unloading. 40 CFR 61.150(c); Rule 370, Section 301.8(a)(1).
- b. Failure to maintain records, failure to send waste shipment records to the waste generator in a timely manner, improperly labeling bags or other recordkeeping violations. 40 CFR 61.150(d); Rule 370, Sections 301.8(a)(1) and 301.8(b)(2)(d).

C. Work Practice Violations

1. Major

- a. Thorough inspection not performed. 40 CFR 145(a); Rule 370, Section 301.8(a)(2).
- b. Failure to keep asbestos-containing material adequately wet by using amended water. 40 CFR 61.145(c); Rule 370, Section 301.8(b)(2)(c).

- c. Disturbing non-regulated asbestos-containing material—rendering it regulated—and not using proper removal methods. 40 CFR 61.145(c); Rule 370, Section 301.8(a)(1).

2. Moderate

- a. Failure to maintain current AHERA/ASHARA contractor/supervisor certification and be on-site at all times during active asbestos abatement work at or above NESHAP threshold amounts. 40 CFR 61.145(c)(8); Rule 370, Section 301.8(b)(1)(c).
- b. Disturbing non-regulated asbestos-containing material—rendering it regulated—and subsequent, proper removal methods were used. 40 CFR 61.145(c); Rule 370, Section 301.8(a)(1).

3. Minor

- a. Failure to post evidence of required training. 40 CFR 61.145(c)(8); Rule 370, Section 301.8(b)(1)(d).
- b. Failure to have on-site and available for inspection at the facility, a copy of the inspection reports and laboratory test results during all demolition and renovation activities. Rule 370 Sec. 301.8b.(1)(b)
- c. Failure to maintain current AHERA worker certifications for all asbestos workers on-site. Rule 370, Section 301.8(b)(1)(c).
- d. Failure to have on-site and available for inspection all asbestos contractor/supervisors and workers color photo identification, during asbestos setup, removal, handling, collecting, containerizing, cleanup and dismantling. Rule 370, Sec. 301.8 b.(1)(d)

V. Multi-day or Multiple Violations

A. Multi-day Penalties

Notification violations should not be assessed multi-day penalties. Penalties for multiple violations are appropriate for notification violations if there are several instances of failure to submit or failure to update a required notification (e.g., if there was more than one renovation or demolition project).

Waste shipment violations should not be assessed as multi-day penalties, with the exception of waste shipment vehicle marking. Assess a penalty for each day of the shipment for which the vehicle marking was missing or inadequate.

Most work practice violations can be assessed multi-day penalties, depending on the nature of the renovation or demolition and the specific violation. Failure to perform a thorough inspection should not be assessed as a multi-day penalty. Some work practice violations are more appropriately addressed through one penalty per renovation or demolition project. For more serious work practice violations, penalties per day of improper work practices may be warranted. An example of an improper work practices violation that may warrant multi-day

penalties is a contractor that refuses to stop working under conditions that violate the asbestos regulations.

For multi-day violations, the preferred calculation is to assess the full matrix amount for the first day of noncompliance. Then for each additional day beyond the first for which there is direct evidence that the violation continued, assess the full matrix amount. Days on which a continuing violation can be assumed due to a failure to demonstrate a return to compliance are assessed only at default fraction (10%) of the full matrix amount.

B. Multiple Violations

A penalty should be calculated for every violation that constitutes an independent and substantially distinguishable violation of subsections of the regulation, or when the same person has violated the same requirement in substantially different locations. One activity or omission can result in more than one violation which should be considered separate violations for penalty calculation purposes. For example, a contractor may demolish a building, which could result in violations such as failure to provide notification, no thorough inspection, inappropriate work practices, and disposal violations.

VI. Economic Benefit

For asbestos violations, you should estimate economic benefit by determining the costs saved by not following a department rule, e.g. not performing a thorough inspection, not using proper removal methods, etc. If actual costs are not available, use EPA's computer model for calculating economic benefits (BEN) or another accepted economic method may be used to determine economic benefit. In some cases it may be very difficult to determine the economic benefits of non-compliance, or the amount of the benefits may be insignificant.

VII. Gravity Component Penalty Matrix

The penalty matrix is a three-by-three grid of nine penalty ranges or "boxes" (see Table 1). Each box corresponds to the varying degrees (minor, moderate or major) of a violation's *potential for harm* and *extent of deviation* from a requirement.

Each box in the penalty matrix contains a range of penalty amounts; the default baseline penalty is the midpoint of the range. For knowing, deliberate or chronic violations, penalties should be calculated by using the top of the ranges. The top of the ranges can also be applied to any business or individual for any violation if the seriousness of the violation or history of non-compliance requires a higher penalty to achieve deterrence. The penalty amounts contained in Table 1 are based on a general determination of the relative severity of the violations listed. The department reserves the discretion to calculate penalty amounts different from the amounts listed based on the individual circumstances of a particular violation especially where human exposure has occurred or could have occurred.

Adjustment factors, mitigation factors, and other costs may be applied per violation or applied to the total penalty.

Table 1. Gravity Component Penalty Calculation Matrix for Asbestos Violations

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm	Major	\$8000 - \$10,000 [\$9000]	\$6000 - \$8000 [\$7000]	\$4400 - \$6000 [\$5200]
	Moderate	\$3200 - \$4400 [\$3800]	\$2000 - \$3200 [\$2600]	\$1200 - \$2000 [\$1600]
	Minor	\$500 - \$1200 [\$850]	\$300 - \$700 [\$500]	\$200 - \$500 [\$350]

This appendix is guidance only, the department retains the discretion to use alternate methods of calculating penalties as warranted by specific circumstances. This guidance is for calculating suggested penalties for the purpose of reaching settlement. Higher penalties will be sought if a court action is required to resolve an enforcement case.

**Maricopa County Air Quality Department
Asbestos Penalty Worksheet**

<u>Source Name/Notification/Permit #</u>	<u>NOV#</u>	<u>Violation Citation</u>	<u>Prepared by</u>
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A. Gravity Component (from Table 1)

1. Degree of Potential for Harm _____
2. Extent of Deviation from Requirement _____

Base Amount _____

B. Multi-Day Violations

1. Each additional day on which a continuing violation can be assumed due to a failure to demonstrate a return to compliance: _____ day(s) times (default: +10% of base amount) = _____
And/Or
2. Each additional day beyond the first for which there is direct evidence that the violation continued: _____ day(s) times _____ (+100% of base amount) = _____
Multi-day amount + base amount = **Total Amount** _____

C. Adjustments to Gravity Component

1. **Degree of Willfulness or Negligence** +25% +10% +0%
2. **Degree of Cooperation**
Good Faith Efforts to Comply/Lack of Good Faith before or after the Department Informed the Responsible Party of the Violation -15% -5% 0% +5%
3. **History of Repeat Violation**—previous violations of the same requirement at project locations requiring separate notifications
2nd violation +100%
3rd or greater violation apply the statutory maximum

Total adjustments % _____

_____	X	(1+ _____)	=	_____
Total Amount		Total Adjustments		Gravity Component

D. Mitigation Factors

Ability to Pay _____

Litigation Risk _____

Adjustment Penalty Value _____

E. Economic Benefit Component (optional)

Avoided costs _____

Illegal profits _____

Total Economic Benefit _____

_____	+	_____	+	_____	=	_____
Gravity Component		Mitigating factors		Economic Benefit		Total

Note: For C, D, and E costs and factors attach documentation